

UNITED STATES DISTRICT COURT  
Northern District of California

ROSA MARGARITA RIVERA,

No. C 13-2322 MEJ

Plaintiff,

**ORDER RE: PLAINTIFF'S MOTION  
FOR ATTORNEY'S FEES AND  
COSTS**

v.

PORTFOLIO RECOVERY ASSOCIATES,  
LLC, et al.,

**(Docket No. 22)**

Defendants.

**INTRODUCTION**

Plaintiff Rosa Margarita Rivera ("Plaintiff") brought the instant action against Defendants Portfolio Recovery Associates, Legal Recovery Law Offices, Inc., and Andrew Paul Rundquist ("Defendants"), alleging that they violated her rights under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692–1992o, and the California equivalent of the FDCPA, known as the Robbins-Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"), Cal. Civ. Code §§ 1788-1788.32. This matter is presently before the Court on Plaintiff's Motion for Attorney's Fees and Costs. Dkt. No. 22. Defendants have filed an Opposition (Dkt. No. 25), to which Plaintiff filed a Reply (Dkt. No. 26). The Court finds Plaintiff's Motion suitable for disposition without oral argument and VACATES the October 3, 2013, hearing. Civ. L.R. 7-1(b); Fed. R. Civ. P. 78(b). Having considered the parties' papers, relevant legal authority, and the record in this case, the Court now issues the following order.

**BACKGROUND**

In her Complaint, Plaintiff alleges that an unrelated third party named "Rosa Rivera" incurred debt on an HSBC Card Services credit card, which was transferred to Portfolio Recovery Associates

1 for collection. Compl. ¶¶ 16-17, Dkt. No. 1. On May 22, 2012, Defendants filed a lawsuit against  
 2 Plaintiff in the San Francisco County Superior Court, which sought to collect \$2,461.18 in principal,  
 3 as well as interest and attorney's fees and costs. *Id.* ¶ 18. After receiving the complaint, Plaintiff's  
 4 granddaughter contacted Defendants and informed them that Plaintiff never had an HSBC credit card  
 5 and that Defendants were suing the wrong person. *Id.* ¶ 43. When Defendants refused to dismiss the  
 6 complaint, Plaintiff retained legal counsel, thereby incurring attorney's fees and costs. *Id.* ¶ 44.

7 Plaintiff alleges that, beginning July 10, 2012, and continuing through May 8, 2013, her  
 8 counsel repeatedly notified Defendants that they had targeted and sued the wrong Rosa Rivera. *Id.* ¶¶  
 9 45-56. However, Defendants continued to prosecute the state court action until days before the  
 10 scheduled trial, at which time they filed a Request for Dismissal Without Prejudice on May 9, 2013.  
 11 *Id.* ¶ 57.

12 Plaintiff filed her Complaint against Defendants in this Court on May 22, 2013. Compl., Dkt.  
 13 No. 1. Thereafter, on July 19, 2013, Defendants served an Offer of Judgment Pursuant to Federal  
 14 Rule of Civil Procedure 68. Dkt. No. 19-1 at 1. Defendants' offer included judgment in Plaintiff's  
 15 favor in the amount of \$8,500, plus an award of "reasonable attorney's fees and costs, to be mutually  
 16 agreed upon by the parties, or if no agreement can be reached, to be determined by the Court in  
 17 accordance with 15 U.S.C. § 1692k." *Id.* at 1-2. In their offer, Defendants stated: "This offer is not  
 18 [to] be construed as either an admission that Defendants . . . are liable in this action, or that  
 19 Plaintiff(s) have suffered any damage." *Id.* at 2. Plaintiff filed her Notice of Acceptance of Offer of  
 20 Judgment on August 2, 2013. Dkt. No. 19. Thereafter, on August 8, 2013, the Court entered  
 21 judgment pursuant to the terms of the offer. Dkt. No. 20.

22 On August 22, 2013, Plaintiff filed the present Motion for Attorney's Fees and Costs. Dkt.  
 23 No. 22. Plaintiff seeks a total award of \$20,796.54. *Id.* at 9; Reply at 9.

#### 24 **LEGAL STANDARD**

25 "In enacting the FDCPA, Congress sought to counter the abusive, deceptive and unfair debt  
 26 collection practices sometimes used by debt collectors against consumers." *Turner v. Cook*, 362 F.3d  
 27 1219, 1226-27 (9th Cir. 2004). An aggrieved party may thus recover actual damages, statutory  
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1 damages and seek an award of attorney's fees and costs where the provisions of the FDCPA have  
2 been violated. 15 U.S.C. § 1692k(a). The Rosenthal Act is California's counterpart to the FDCPA  
3 and incorporates its salient provisions. Cal. Civ. Code § 1788.17.

4 Both the FDCPA and the Rosenthal Act direct a court to award attorney's fees to a prevailing  
5 consumer. 15 U.S.C. 1692k(a)(3); Cal. Civ. Code § 1788.30(c). In determining a fee award, district  
6 courts apply a two-step process to calculate the appropriate award. *Fisher v. SJB-P.D., Inc.*, 214 F.3d  
7 1115, 1119 (9th Cir. 2000). First, the court calculates the presumptive fee award, also known as the  
8 "lodestar figure," by multiplying the number of hours reasonably expended on the litigation by a  
9 reasonable hourly rate. *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010).

10 Second, "in appropriate cases, the district court may adjust the 'presumptively reasonable'  
11 lodestar figure based upon the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70  
12 (9th Cir. 1975) . . . that are not subsumed into the initial lodestar calculation." *Intel Corp. v.*  
13 *Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). Specifically, the *Kerr* factors are: (1) the time  
14 and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to  
15 perform the legal services properly; (4) the preclusion of other employment by the attorney due to  
16 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time  
17 limitations imposed by the client or the circumstances; (8) the amount involved and the results  
18 obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability"  
19 of the case; (11) the nature and length of the professional relationship with the client; and (12)  
20 awards in similar cases. *Kerr*, 526 F.2d at 70. "The lodestar amount presumably reflects the  
21 novelty and complexity of the issues, the special skill and experience of counsel, the quality of  
22 representation, and the results obtained from the litigation." *Intel Corp.*, 6 F.3d at 622; *see*  
23 *also Perdue v. Kenney A ex rel Winn*, 559 U.S. 542, 553 (2010) (noting that the lodestar figure  
24 includes "most if not all of the relevant factors constituting a reasonable attorney's fee") (internal  
25 quotations omitted). Thus, in appropriate cases, the court may examine the remaining factors to  
26 determine whether an enhancement or decrease in the lodestar figure is warranted. *Clark v. City of*  
27 *Los Angeles*, 803 F.2d 987, 990 (9th Cir. 1986). However, there is a strong presumption that the  
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1 lodestar figure represents a reasonable fee and any upward or downward adjustment of that figure is  
 2 proper only in “rare and exceptional cases.” *Van Gerwen v. Guar. Mut. Life Co.*, 214 F.3d 1041,  
 3 1045 (9th Cir. 2000) (internal citations omitted).<sup>1</sup>

#### 4 DISCUSSION

5 In this case, Plaintiff accepted Defendants’ offer of judgment and there is no dispute that she  
 6 is the prevailing party. Further, Defendants’ offer included an award of “reasonable attorney’s fees  
 7 and costs, to be mutually agreed upon by the parties, or if no agreement can be reached, to be  
 8 determined by the Court in accordance with 15 U.S.C. § 1692k.” Dkt. No. 19-1 at 1-2. Thus, there is  
 9 also no dispute that Plaintiff is entitled to an award of attorney’s fees and costs. Instead, Defendants’  
 10 Opposition focuses on the reasonableness of Plaintiff’s fee request, arguing that, “[g]iven the gross  
 11 excessiveness of the fees claimed in this matter for a case that was not litigated,” Plaintiff’s fee  
 12 request is unreasonable. Opp’n at 3.

13 To support her fee request, Plaintiff provided itemized invoices detailing the services rendered  
 14 by her attorneys from May 16, 2013, to August 22, 2013; the hours worked in rendering those  
 15 services, broken down by task; and the hourly rate billed by the attorney performing a particular task.  
 16 Schwinn Decl., Ex. A, Dkt. No. 22-2; Ly Decl., Ex. B, Dkt. No. 22-4. These invoices represent that

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 18 <sup>1</sup> For attorneys’ fee awards authorized under California law, the Court applies a similar  
 19 framework to determine the appropriate fee amount. The fee-setting inquiry in California begins  
 20 with the lodestar, which represents the number of hours reasonably expended multiplied by the  
 21 reasonable hourly rate. *Ctr. for Biological Diversity v. Cnty. of San Bernardino*, 185 Cal. App. 4th  
 22 866, 895 (2010); *Chavez v. City of Los Angeles*, 47 Cal. 4th 970, 985 (2010). The lodestar is  
 23 considered the basic fee for comparable services in the legal community and it may be adjusted by  
 24 the court based on several factors. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citing *Serrano*  
 25 *v. Priest*, 20 Cal. 3d 25, 49 (1977)). The California Supreme Court has explained that “[t]he purpose  
 26 of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court  
 27 determines, retrospectively, whether the litigation involved a contingent risk or required  
 28 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate  
 the fair market value for such services.” *Id.* (citing *Serrano*, 20 Cal. 3d at 49). To determine  
 whether a multiplier should be applied, the court considers the following factors: (1) the novelty or  
 difficulty of the questions involved; (2) the expertise and capability of counsel; (3) the results  
 obtained; (4) the contingent risk involved in the case; (5) the extent to which the nature of the  
 litigation precluded other employment by the attorneys; and (6) whether the attorneys received  
 public and/or charitable funding. *Serrano*, 20 Cal. 3d at 48-49.

between May 16, 2013, to August 22, 2013, Plaintiff was billed the following amount for work performed by Mr. Schwinn and Ms. Ly:

<u>Attorney</u>	<u>Hours Billed</u>	<u>Hourly Rate</u>	<u>Total</u>
Fred Schwinn	26.5	\$450.00	\$11,925
Janet Ly	20.4	\$300.00	\$6,120
<b>TOTAL</b>	<b>46.9</b>		<b>\$18,045</b>

Schwinn Decl. ¶¶ 12, 14; Ly Decl. ¶¶ 12, 13. Mr. Schwinn states he has spent “an additional .2 hours in this matter reviewing Defendants’ Opposition to Plaintiff’s Motion herein, and an additional 3.8 hours drafting Plaintiff’s Reply Memorandum and related documents. Furthermore, [he] anticipate[s] an additional .5 hours of attorney time will be incurred for preparing and attending the hearing in this matter.” Suppl. Schwinn. Decl. ¶ 3, Dkt. No. 26-1. Thus, Plaintiff seeks an additional \$2,025 (4.5 hours x \$450 per hour), for a total fee award of \$20,070.

Plaintiff also seeks an award of costs in the amount of \$1,423.24 as follows: (1) \$400 in filing fees; (2) \$23.60 in photocopying fees; (3) \$227 in process server fees; and (4) \$61.02 in mileage expenses. Schwinn Decl. ¶ 15.

1. Counsel’s Reasonable Hourly Billing Rates

The Court first evaluates whether counsel’s billing rates are reasonable. “[T]he established standard when determining a reasonable hourly rate is the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 971 (9th Cir. 2008). “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community and rate determinations in other cases . . . are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.3d 403, 407 (9th Cir. 1990). As stated above, Plaintiff’s counsel claims an hourly rate of \$450 for Mr. Schwinn and \$300 for Ms. Ly. Defendants raise no specific objections to the hourly rates, although they do argue that Mr. Schwinn’s rate is “excessive” and note that he has increased his hourly rate by \$100 in two years. Opp’n at 4, 6.

Based on the Court’s review of counsel’s experience and education, as well as comparing

1 those rates to other attorneys with equivalent skill, experience, and reputation in Northern California,  
2 the Court finds Mr. Schwinn's billing rate of \$450 per hour and Ms. Ly's rate of \$300 per hour are  
3 reasonable. In his Declaration, Mr. Schwinn states that he is a shareholder in the law firm Consumer  
4 Law Center, Inc. Schwinn Decl. ¶ 1. He is a 1994 graduate *magna cum laude* of Washburn  
5 University in Topeka, Kansas, and a 1997 graduate of Washburn University School of Law. *Id.* ¶ 4.  
6 His practice is limited exclusively to the representation of consumers, with particular emphasis on  
7 representing consumers under the FDCPA, Truth in Lending Act, Telephone Consumers Protection  
8 Act, Uniform Commercial Code, common law fraud, misrepresentation and deceit, usury, and other  
9 laws enacted to protect consumers. *Id.* ¶ 5. Mr. Schwinn was honored as "Attorney of the Year" in  
10 2013 by Community Legal Services in East Palo Alto, and was also honored as "Outstanding  
11 Volunteer Attorney" in 2011 and 2012 by the Volunteer Legal Services Program of the San Francisco  
12 County Bar Association. *Id.* ¶ 7. He has an "AV Preeminent" rating by Martindale-Hubbell's Peer  
13 Review Ratings system in 2012 and 2013. *Id.* ¶ 9. Plaintiff also submitted the declaration of Mr.  
14 Ronald Wilcox, another consumer protection attorney, to support the reasonableness of Mr.  
15 Schwinn's requested hourly rate. Wilcox Decl. ¶¶ 13-14, Dkt. No. 22-8 (stating that the market rate  
16 in the San Francisco Area for litigation of similar difficulty and complexity range from "\$300 to  
17 \$600+ per hour, depending on the skill, experience, and reputation of the attorney").

18 Ms. Ly received her undergraduate degree from the University of California, Berkeley, and  
19 received her law degree from Santa Clara University School of Law in 2007 with an emphasis in  
20 Public Interest Law. Ly Decl. ¶ 3. She was admitted to the State Bar of California in 2007, and to  
21 the United States District Court for the Northern District of California in 2008. *Id.* Ms. Ly is the  
22 founder and principal attorney of Janet Ly Law Office, located at 201 Spear Street, Suite 1100 San  
23 Francisco, California 94105. *Id.* ¶ 2. Her practice focuses exclusively on representing consumers in  
24 debt collection defense and collection abuse, auto repossessions and credit reporting. *Id.* Since she  
25 was admitted to practice law in 2007, she has focused in the area of consumer and public interest  
26 litigation, focusing on cases under the FDCPA, Truth In Lending Act, California Rosenthal Fair Debt  
27 Collection Practices Act, California Rees-Levering Automobile Sales and Finance Act, and other  
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1 laws enacted to protect consumers. *Id.* ¶ 5. She is a member of the National Association of  
2 Consumer Advocates, and she also serves on the volunteer attorney panel for the Bar Association of  
3 San Francisco Justice and Diversity Center Consumer Debt Collection Clinic, and the Debt  
4 Collection Clinic of the Alameda County Bar Association. *Id.* ¶ 4.

5 The Court finds that Plaintiff has adequately shown, through the affidavits attached to her  
6 Motion, that \$450 per hour and \$300 per hour for Mr. Schwinn and Ms. Ly, respectively, are within  
7 the range of reasonable hourly rates for attorneys of comparable skill, experience, and reputation  
8 litigating similar cases in this Court's jurisdiction. *See, e.g., Palmer v. Far West Collection Servs.,*  
9 *Inc.*, 2008 WL 5397140, at \*1 (N.D. Cal. Dec. 18, 2008) (awarding fees in successful FDCPA action  
10 for three attorneys at rates of \$325 and \$465 per hour).

11 2. Reasonableness of Hours Expended in Litigating the Case

12 Having determined counsel's reasonable billing rates, the Court turns to the second  
13 component of the lodestar calculation: ascertaining the number of hours reasonably expended  
14 litigating this matter. The party seeking fees bears the initial burden of establishing the hours  
15 expended litigating the case and must provide detailed time records documenting the tasks completed  
16 and the amount of time spent. *Hensley v. Eckerhardt*, 461 U.S. 424, 434 (1983); *Welch v. Met. Life*  
17 *Ins. Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007). "Where the documentation of hours is inadequate, the  
18 district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433. The district court may  
19 also exclude any hours that are excessive, redundant, or otherwise unnecessary. *Id.* at 434.

20 After the party seeking fees has come forward with its evidence supporting the time billed,  
21 "[t]he party opposing the fee application has a burden of rebuttal that requires submission of evidence  
22 to the district court challenging the accuracy and reasonableness of the hours charged or the facts  
23 asserted by the prevailing party in its submitted affidavits." *Gates v. Deukmejian*, 987 F.2d 1392,  
24 1397-98 (9th Cir. 1992). The party opposing fees must specifically identify defects or deficiencies in  
25 the hours requested; conclusory and unsubstantiated objections are insufficient to warrant a reduction  
26 in fees. *Cancio v. Fin. Credit Network, Inc.*, 2005 WL 1629809, at \*3 (N.D. Cal. July 6, 2005). Even  
27 if the opposing party has not objected to the time billed, the district court "may not uncritically accept  
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1 a fee request,” but is obligated to review the time billed and assess whether it is reasonable in light of  
2 the work performed and the context of the case. *Common Cause v. Jones*, 235 F. Supp. 2d 1076,  
3 1079 (C.D. Cal. 2002) (citing *Sealy, Inc. v. Easy Living, Inc.*, 743 F. 2d 1378, 1385 (9th Cir. 1984));  
4 *see also McGrath v. Cnty. of Nevada*, 67 F.3d 248, 254 n.5 (9th Cir. 1995) (noting that court may not  
5 adopt prevailing party’s representations without conducting an independent review of the fee  
6 application).

7 In their Opposition, Defendants raise several arguments why they believe Plaintiff’s fee  
8 request is either unreasonable, excessive, redundant, or otherwise unnecessary in light of the fact that  
9 the lawsuit did not proceed beyond the filing of the original complaint. The Court will examine each  
10 argument in turn.

11 *a. Preparing for and Attending Hearing*

12 As an initial matter, Mr. Schwinn pre-billed .5 hours for preparing for and attending the  
13 hearing on Plaintiff’s Motion. However, because the Court vacated the hearing on the Motion for  
14 Attorney’s Fees well before the October 3 hearing date, the Court deducts the .5 hours from the fee  
15 award.

16 *b. Fees Related to the Complaint*

17 Defendants argue that Plaintiff’s fee documentation is inadequate. Opp’n at 3. Defendants  
18 first point to the fees claimed for drafting the Complaint in this matter. On May 18, 2013, Mr.  
19 Schwinn claimed 4.5 hours for drafting the Complaint. Schwinn Decl., Ex. A, p. 1. On May 20, he  
20 claimed an additional 8.3 hours for drafting the Complaint. *Id.* Mr. Schwinn also claimed 1 hour for  
21 discussing with Ms. Ly on May 20 and 21 when and how to file the Complaint. *Id.* at 1-2. On May  
22 22, 2013, Mr. Schwinn claimed 0.2 hours for filling out the civil cover sheet and summons forms. *Id.*  
23 at 2. On May 20, 2013, Ms. Ly claimed 1 hour for reviewing the Complaint draft. Ly Decl., Ex. B at  
24 1. Ms. Ly also claimed 0.2 hours on May 21 for discussing with Mr. Schwinn when and how to file  
25 the Complaint. *Id.* In all, Mr. Schwinn and Ms. Ly claimed they expended a total of 15.2 hours  
26 drafting and filing the complaint. Defendants argue that “[t]he time expended is excessive on its face,  
27 especially considering the degree of experience and skill Mr. Schwinn claims to have in these  
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1 matters,  
2 experience for which Mr. Schwinn believes he should be paid an excessive hourly rate of \$450.”  
3 Opp’n at 4. Defendants further argue that the Complaint “reads very similarly to the cross-complaint  
4 Ms. Ly filed a year earlier in the state court action.” *Id.*

5       Upon review of the billing records, the Court finds that certain entries are reasonable. The  
6 one hour Ms. Ly spent reviewing the Complaint is not excessive, nor is the time co-counsel spent  
7 discussing the Complaint. The Court also finds that .2 hours for filling out the civil cover sheet and  
8 summons forms is not excessive. However, the 12.8 hours Mr. Schwinn claims for drafting the  
9 Complaint is unreasonable. First, the Court notes that some of the allegations in the state court cross-  
10 complaint are similar to the claims made in the Complaint filed in this case. Given that Ms. Ly  
11 drafted the cross-complaint less than one year prior, it is unclear why Mr. Schwinn drafted the entire  
12 Complaint here. The Court finds that counsel could have avoided duplicative efforts had Ms. Ly  
13 contributed to drafting the Complaint. Further, Ms. Ly bills at \$300 per hour, while Mr. Schwinn  
14 bills at \$450; thus, not only were duplicative efforts made, they were also more expensive.

15       Plaintiff argues that Defendants’ assertion that the Complaint reads similarly to the cross-  
16 complaint is false and misleading. Reply at 5. In support of this argument, Plaintiff points out that  
17 the state court cross-complaint had no malicious prosecution claims. *Id.* Plaintiff argues that the  
18 bulk of the time spent drafting the Complaint herein “involved precisely verifying the facts alleged  
19 for the malicious prosecution claim. Unlike a ‘check the box’ complaint commonly used in  
20 collection actions, a malicious prosecution claim can not be brought casually – at least, not by  
21 competent counsel.” *Id.* While the Court appreciates the effort Mr. Schwinn put into drafting the  
22 malicious prosecution claim, it is also aware that other courts have found that researching and  
23 drafting an FDCPA claim should take far less time. *St. Bernard v. State Collection Serv., Inc.*, 782 F.  
24 Supp. 2d 823, 828 (D. Ariz. 2010) (finding that FDCPA complaints should take no more than five  
25 hours to draft); *Silva v. Patenaude & Felix, P.C.*, 2010 WL 2000523, at \*3 (N.D. Cal. May 12, 2010)  
26 (finding 2.3 hours for drafting FDCPA complaint excessive where counsel had filed a similar  
27 complaint in another case). Since Plaintiff’s counsel has represented himself as an experienced  
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1 litigator of FDCPA claims, he should be held to the hours that other experienced FDCPA attorneys  
2 would bill for filing such a complaint. Moreover, the Court must take into account the fact that Ms.  
3 Ly drafted the cross-complaint, yet she did not contribute to drafting the Complaint here. However,  
4 the Court finds it appropriate to permit additional time for the drafting of the malicious prosecution  
5 claim. Thus, the 12.8 hours Mr. Schwinn spent drafting the complaint is reduced by half, to 6.4  
6 hours.

7 *c. Time to Re-Research the Cross-Complaint*

8 In her billing records, Ms. Ly claims 1.2 hours for research related to damages. Ly Decl., Ex.  
9 B at 1. Defendants argue that this time is duplicative, unnecessary and excessive. Opp'n at 4.  
10 Specifically, Defendants argue that the damages in the state court action are the same as those in the  
11 federal action, and that Ms. Ly, "with the alleged experience and skill deserving of a \$300 per hour  
12 rate, and with the alleged experience and skill of her co-counsel, should not require 1.2 hours to look  
13 up 15 U.S.C. § 1692k and read it." *Id.* Plaintiff fails to address this argument in her Reply and, given  
14 that the damages are the same in both courts, the Court finds this billing entry duplicative.  
15 Accordingly, the Court shall deduct the 1.2 hours Ms. Ly spent researching damages.

16 *d. Visits to Plaintiff's Residence*

17 Ms. Ly claims time for four visits to Plaintiff's home plus mileage, for a total of 6.2 hours. Ly  
18 Decl., Ex. B at 1-3. Similarly, Mr. Schwinn claims time for travel to/from San Francisco for a  
19 meeting with Plaintiff and Ms. Ly to review the "Complaint and facts of the case," as well as  
20 "[d]iscussing what is required of a Plaintiff in a federal court case." Schwinn Decl., Ex. A at 2.  
21 Defendants argue that the consultations were "duplicative and unnecessary considering the federal  
22 action was a redraft of the state action." Opp'n at 5. Defendants further argue that, "considering the  
23 consultations could have been handled by more economically feasible means, including but not  
24 limited to telephone conferences with plaintiff's niece, . . . the 9.2 hours expended driving to  
25 plaintiff's residence should be stricken from the total fees requested." *Id.* In response, Plaintiff  
26 argues that "[m]eeting a senior citizen client in her home to gather facts for a fact-heavy Complaint is  
27 entirely reasonable, and compensable." Reply at 7. Upon review of the parties' arguments, the Court  
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1 does not find this time excessive and therefore declines to deduct it from Plaintiff's fee request.

2 *e. Comparison to Scott Case*

3 Finally, Defendants argue that Plaintiff's requested fees are grossly disproportionate to fees  
4 Mr. Schwinn has been awarded in similar cases. Opp'n at 6. Specifically, Defendants direct the  
5 Court's attention to *Scott v. Fed. Bond and Collection Serv., Inc.*, 2011 WL 3652531 (N.D. Cal. Aug.  
6 19, 2011). In that case, Mr. Schwinn was awarded \$17,500.00 in fees in an FDCPA action that he  
7 stated required 49.6 hours of work. *Id.* at \*5, 8. Defendants argue that Mr. Schwinn spent roughly  
8 the same amount of time and was awarded the same amount of fees he is requesting here, yet the  
9 "glaring" difference between the two cases is that in *Scott*, Mr. Schwinn filed a complaint, filed an  
10 amended complaint, prevailed on a motion to strike, survived a motion to dismiss, propounded  
11 written discovery, answered written discovery, appeared at a case management conference, and  
12 concluded litigation of the FDCPA claim 15 months after filing. Opp'n at 6. In comparison,  
13 Defendants point out that in the present case, Mr. Schwinn filed suit in May and, less than two  
14 months later, they conveyed their Rule 68 offer. *Id.* Defendants argue that "[i]n just two short years,  
15 Mr. Schwinn has increased his hourly rate by \$100 and has figured out how to place as many hours  
16 into a two-month case as he once placed into a fifteen-month case. In the interests of justice and in  
17 the interests of preserving the integrity of the legal profession, the court should reduce the requested  
18 fees to \$2,436.08; that is, 13.5% of the requested amount consistent with two months being 13.5% of  
19 fifteen months." *Id.* at 6-7.

20 In response, Plaintiff argues that the difference between the two cases is that the majority of  
21 the attorney time in *Scott* was incurred after the filing of the Complaint, and not before, as in the case  
22 at bar. Reply at 4. Plaintiff further argues that the two cases are very different, noting that *Scott* was  
23 a "letter case" – an enforcement action for statutory damages due to a single violative collection  
24 letter, whereas the case at bar brought not only FDCPA and Rosenthal claims, but also a malicious  
25 prosecution claim seeking actual and punitive damages, as well as trebled damages due to  
26 Defendants' harassment of a senior citizen. *Id.* at 4-5. Plaintiff contends that the case at bar required  
27 more time to glean facts buried in pleadings, email communications and other correspondence. *Id.* at  
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1 5.

2 Having considered the parties' arguments, the Court finds a reduction appropriate. A review  
3 of the docket in *Scott*, C-10-2825 LHK, shows that Scott filed her original complaint on June 28,  
4 2010 (Dkt. No. 1), and filed a first amended complaint on July 14 (Dkt. No. 6), which contained three  
5 claims for relief under the FDCPA, the Rosenthal Act, and California Civil Code section 1812.700(a).  
6 On August 27, Scott filed three requests for default against the three named defendants. Dkt. Nos.  
7 10-12. The parties subsequently filed a stipulation to withdraw the default requests, after which two  
8 defendants filed a joint answer on August 31 (Dkt. No. 15), and the third defendant answered on  
9 October 13, asserting nineteen affirmative defenses (Dkt. No. 25). The parties began discovery and  
10 law and motion practice in October 2010 – they exchanged initial disclosures pursuant to Rule  
11 26(a)(1), and served and responded to interrogatories, requests for the production of documents, and  
12 requests for admissions. *Scott*, 2011 WL 3652531, at \*2 (citations omitted). The parties also met and  
13 conferred regarding discovery. *Id.*

14 On October 13, 2010, Scott filed a motion to strike the third defendant's affirmative defenses.  
15 Dkt. No. 28. All three defendants opposed this motion and Scott therefore also needed to file a  
16 reply brief. Dkt. Nos. 38, 39. On December 14, 2010, the defendants filed a Rule 68 Offer of  
17 Judgment, which Scott rejected. Dkt. No. 34, Ex. A. The defendants then moved to dismiss, which  
18 Scott opposed. Dkt. Nos. 34, 37. The court denied the motion to dismiss and granted Scott's motion  
19 to strike with regard to fifteen of the nineteen affirmative defenses. Dkt. No. 45. On February 3,  
20 2011, Plaintiff informed the court that she had accepted the defendants' second Rule 68 offer of  
21 judgment. Dkt. No. 48. The parties also prepared two case management statements and participated  
22 in two case management conferences. Dkt. Nos. 21, 29, 41, 42, 46.

23 In comparison, Plaintiff filed her Complaint on May 22, 2013, and accepted Defendants'  
24 Offer of Judgment on August 2, 2013. Dkt. Nos. 1, 19. In between, Defendants filed a Motion to  
25 Dismiss, but Plaintiff filed her acceptance before any opposition was due. As Defendants did not file  
26 an answer, they also did not assert any affirmative defenses, and Plaintiff therefore had no need to file  
27 a motion to strike. The parties did not prepare any case management statements and did not  
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1 participate in any case management conferences. Based on the billing records, it does not appear that  
 2 the parties engaged in any discovery whatsoever. The scope of work completed in a 15-month period  
 3 in *Scott* – including discovery, motion practice, and case management conferences – does not  
 4 compare to the Complaint and acceptance of offer of judgment in this case.

5 Although Plaintiff argues that the two cases are actually similar because Plaintiff's case  
 6 includes a malicious prosecution claim seeking actual and punitive damages, and that the case  
 7 therefore required more front-end work "to glean facts buried in pleadings, email communications  
 8 and other correspondence," Opp'n at 5, Plaintiff has failed to provide any authority, and the Court is  
 9 unaware of any, which establishes that the time spent drafting a malicious prosecution claim is  
 10 comparable to conducting discovery (including exchanging initial disclosures, and serving and  
 11 responding to interrogatories, requests for the production of documents, and requests for admissions),  
 12 drafting a motion to strike and an opposition to a motion to dismiss, drafting case management  
 13 conference statements, and participating in case management conferences.

14 The Court begins with the presumption that the lodestar amount is reasonable. *Ferland v.*  
 15 *Conrad Credit Corp.*, 244 F.3d 1145, 1149 n. 4 (9th Cir. 2001). However, given the analysis above,  
 16 the Court finds that Defendants have met their "burden of . . . challenging the accuracy and  
 17 reasonableness" of the lodestar figure. *Gates*, 987 F.2d at 1397-98. Thus, for the reasons discussed  
 18 above, the Court finds that the circumstances here warrant a percentage reduction in the lodestar  
 19 figure. *Id.* at 1150-51 (approving of a percentage or across-the-board reduction in fee awards where  
 20 the district court provides a reasonable explanation for the cut). Accordingly, the Court finds a 50%  
 21 reduction appropriate. *See Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir.  
 22 1995) (upholding across-the-board reduction of \$300,000 fee award); *Harris v. Marhoefer*, 24 F.3d  
 23 16, 19 (9th Cir. 1994) (upholding 50% reduction of a \$70,000 fee award).

24 *f. Summary*

25 Based on the analysis above, the Court GRANTS Plaintiff's Motion for fees in the amount of  
 26 **\$10,552.50**. The Court calculates the fee award as follows:

27 Mr. Schwinn claims 41 hours at \$450 per hour, totaling \$18,450. This amount is reduced by  
 28

1 .5 hours for the hearing that the Court vacated and 6.4 hours for drafting the Complaint, bringing the  
2 revised total to \$15,345 (34.1 hours x \$450). The award is further reduced by 50%, bringing Mr.  
3 Schwinn's total fees award to **\$7,672.50**.

4 Ms. Ly claims 20.4 hours at \$300 per hour, totaling \$6,120. This amount is reduced by 1.2  
5 hours for the time claimed for research related to damages, bringing the revised total to \$5,760 (19.2  
6 hours x. \$300). The award is further reduced by 50%, bringing Ms. Ly's total fees award to  
7 **\$2,880.00**.

8 3. Costs

9 Plaintiff also seeks an award of costs in the amount of \$1,423.24 as follows: (1) \$400 in filing  
10 fees; (2) \$23.60 in photocopying fees; (3) \$227 in process server fees; and (4) \$61.02 in mileage  
11 expenses. Schwinn Decl. ¶ 15. Defendants do not dispute that Plaintiff is entitled to costs for filing,  
12 photocopying, and process server fees under the FDCPA. Therefore, the Court GRANTS Plaintiff's  
13 motion with regard to these costs. *Scott*, 2011 WL 3652531, at \*4 (awarding photocopying expenses,  
14 filing fees, postage, and process server fees in FDCPA case).

15 In their Opposition, Defendants do not directly address Plaintiff's costs, but in their discussion  
16 related to the fees counsel seeks, they do object to the time counsel billed for "time and mileage"  
17 related to consultations at Plaintiff's home. Although Defendants raise this issue in relation to  
18 Plaintiff's claimed fees, the Court construes the argument to apply to the claimed \$61.02 in mileage  
19 costs as well. However, as discussed above, the Court finds that this time is reasonable and,  
20 therefore, no deduction shall be made for mileage. *See, e.g., Johnson v. Dist. of Columbia*, 850 F.  
21 Supp. 2d 74, 82 (D.D.C. 2012) ("Time spent traveling is time that is not spent doing billable work  
22 and, in my experience, lawyers traditionally charge their clients for travel when they are doing so for  
23 their client's business."); *Rand-Whitney Containerboard v. Town of Montville*, 2006 WL 2839236, at  
24 \*27 (D. Conn. Sept. 5, 2006) ("It is also reasonable that counsel be reimbursed for mileage and  
25 parking costs."). Therefore, the Court GRANTS Plaintiff's motion with regard to costs, and awards  
26 Plaintiff **\$1,423.24**.

**CONCLUSION**

Based on the analysis above, the Court GRANTS Plaintiff's Motion for Attorney's Fees in the amount of **\$10,552.50** (\$7,672.50 for Mr. Schwinn and \$2,880.00 for Ms. Ly), and GRANTS Plaintiff's Motion for Costs in the amount of **\$1,423.24**.

**IT IS SO ORDERED.**

Dated: September 23, 2013

  
\_\_\_\_\_  
Maria-Elena James  
United States Magistrate Judge